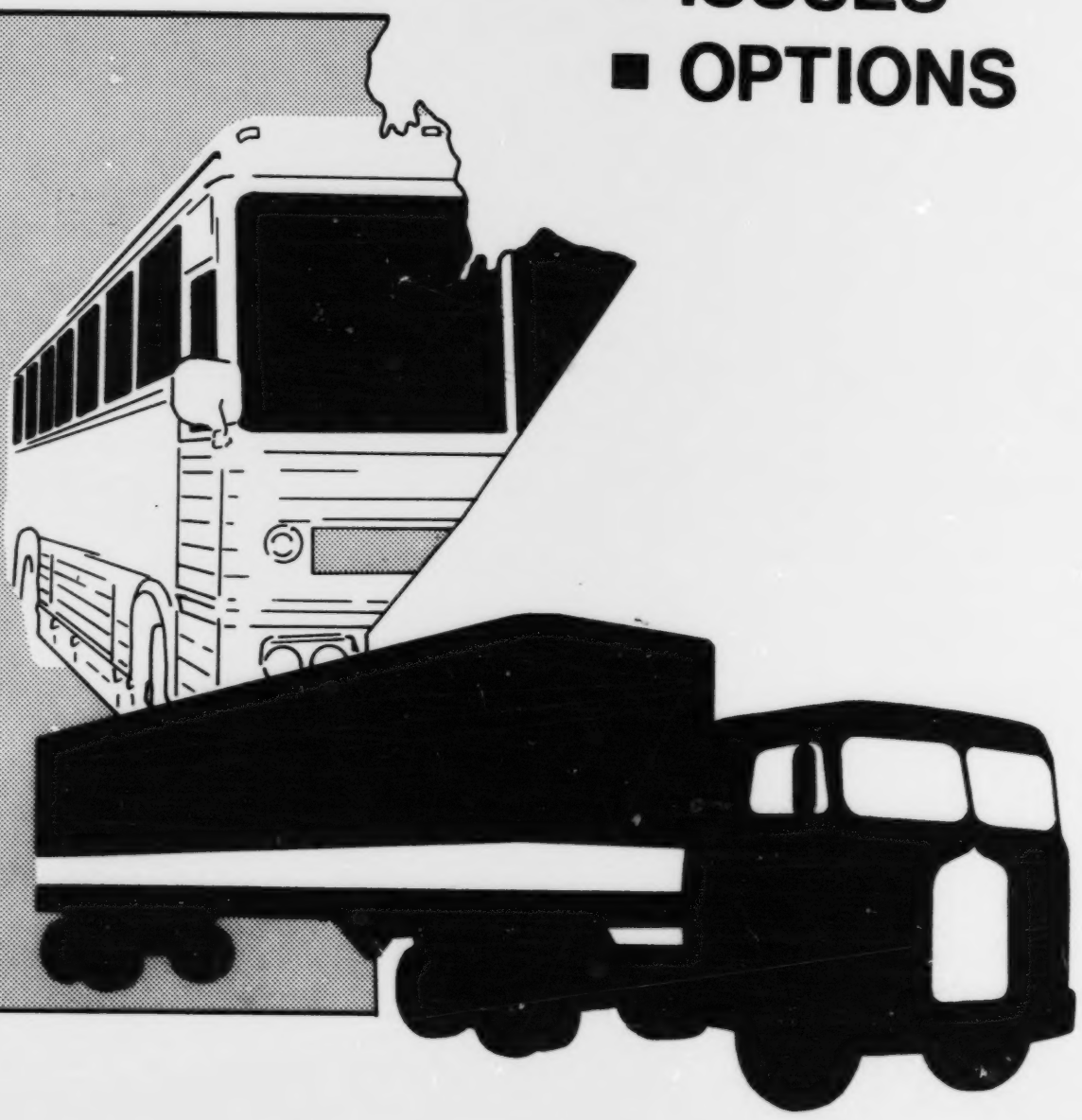
manitoba motor carrier industry

- **PROBLEMS**
- **ISSUES**
- **OPTIONS**

TRANSPORTATION



Prepared for —— The Task Force Review of Motor Carrier Regulations in MANITOBA.

INTRODUCTION

The decision to conduct a major review of the regulations governing the motor transport industry in Manitoba reflects the extremely important role this industry plays in the development and functioning of the province's economy. The industry constitutes a key economic sector, with for-hire carriers recording gross operating revenues of $308,320,000 in 1980 and paying 5,244 employees $97,497,000 in wages. Pri ate carrier transport activities are difficult to quantify in similar terms but are thought to be as great in magnitude.

Recent changes in the regulations in other jurisdictions, not only across Canada but also in the United States, made it all the more necessary to conduct an extensive evaluation of Manitoba's regulations to determine their adequacy, necessity and effectiveness as tools for maximizing benefits to both carriers and users as well as society in general.

Even without regulatory changes in other jurisdictions, however, the review would still have been necessary because:

- Strict enforcement of current regulations has become very difficult as a result of the development of increasingly sophisticated legal instruments.
- Such practices as leasing, arrangements between common carriers and independent truckers, "pirate" truckers and freight brokers,

and others have resulted in the industry outgrowing the regulatory system devised decades ago.

- The difficult working conditions of many so-called independent truckers and owner-operators who are not effectively protected by provincial or federal labour legislation are, in some cases, both unhealthy to them and unsafe to others. There is also concern over existing regulations which prohibit owner-operators from contracting to move freight in private carriage.

The complexity of the issue is compounded by the fact that opinions and proposals vary considerably -- from outright deregulation to more effective enforcement of existing regulations. The necessity for developing solutions has become more pronounced with the onset of the recession which has forced severe cutbacks in the trucking industry and also forced shippers to cut transportation and other costs. And so, while the Manitoba Trucking Association seeks stricter enforcement of regulations, other interest groups, intent on cutting their costs, press for exemptions and even complete deregulation.

Appointed to the Task Force, established last September to conduct a review of this entire situation, were Dr. John Rea (Chairman), Director of the Transportation Division of the Department of Highways and Transportation; John Kinley, Chairman of the Motor Transport Board; Carl Procuik, Registrar of Motor Vehicles and Bill Janssen, an economic consultant.

The Task Force requested officials in the Department of Highways and Transportation to prepare and distribute background papers on the state of Manitoba's motor carrier industry. A report on the System Characteristics of Manitoba's motor carrier industry was released in March 1983, and a compendium of papers setting out Background Information was released in August 1983. The reports were prepared to provide interested parties with an overview of the Manitoba motor carrier industry in a regulatory setting.

The Task Force is now inviting comments and suggestions from the public in general and from two groups specifically affected by regulation:

- Users of transportation services; their views on the adequacy and efficiency of services provided under current regulations and their suggestions for improvement.
- Public service vehicle carriers, commercial truckers, suppliers of transportation services, including labour unions, freight forwarders and independent (owner-operator) truckers for their views of the industry's problems and suggestions for alleviating these problems.

In examining existing regulations not only in Manitoba but also in other jurisdictions, the task force noted a trend towards deregulation as formalized in The National Transportation Act of 1967 which marked a change in federal transportation policy from reliance on regulation to reliance on competition. This was the result of increased competition between the various modes of transport (road, rail, water and air)

which seemed to ensure that frequency, quality and price of services would correspond with demand.

Even after passage of this Act, however, the federal government continued to recognize the importance to grain farmers and the prairie economy in general of the strict regulation of the rail transportation of prairie grain and also continued to heavily subsidize ferry services to P.E.I. and Newfoundland. In general, however, federal policy places greater reliance on competition than on regulation.

Provincial regulation of the for-hire transport of passengers and goods on roads was a natural corollary to federal regulation of railway transport. Originally, this role was carried out by the Municipal and Public Utilities Commission, initially under the general authority of The Public Utilities Act and, after 1930, under The Highway Traffic Act. In 1954, the Motor Carrier Board was entrusted with the regulatory functions; that Board evolved into the present Motor Transport Board.

However, the structure and methods of operations of the trucking industry have changed in ways that were not foreseen in the original legislation. Accordingly, the Task Force is concerned both with the existing regulations as they relate to changed conditions in the motor transport industry and the role government has played in regulating the industry. The most important purpose in seeking public participation relates to the requirement to develop a set of regulations which meet the current requirements of the industry, of users and of society in

general. This final goal is dependent on meaningful public input through a series of public meetings tentatively scheduled for the fall of 1983. What follows is a detailed examination of the current state of the motor transport industry in Manitoba and of the effect (or lack of effect) of existing regulations. It is aimed at increasing public knowledge and thereby encouraging public participation in the development of a more efficient regulatory framework.

PROBLEMS IN THE MOTOR TRANSPORT INDUSTRY

In January and February 1983, the Task Force met with representatives of various associations and interest groups to gain an insight into the problems in the industry as they are perceived by those immediately affected. Discussions were held with representatives of:

Manitoba Trucking Association (MTA)

Canadian Industrial Traffic League (CITL)

Independent Truckers Association of Canada (ITAC)

Canadian Brotherhood of Railway Transport and General Workers (CBRT)

Union of Manitoba Municipalities

Manitoba Association of Urban Municipalities

Manitoba Heavy Equipment Road Builders Association

Independent Dump Truck Association

Manitoba Farm Bureau (MFB)

Manitoba Pool Elevators (MPE)

CN Rail and CP Rail (Intermodal)

Individual truckers

Private Motor Truck Council of Canada (PMTC)

Com Car Owner Operators Association of Ontario

It will be seen that the list includes providers and users of services, employees and employers, regulated and unregulated truckers, competing modes and special interest groups. Each group views the industry from its own perspective and each has different ideas about what is right

and what is wrong in the industry. Matters that seem of major importance to one group may be of no interest to another, while on some issues the views of different groups may be diametrically opposed. On such issues the Task Force has attempted to present a balanced presentation of views.

The objective is not to analyse all problems in the transportation industry, but rather to see how certain problems and issues result from or are affected by government regulations. For that reason there is no discussion of the economic conditions in the industry generally, although it is realized that the industry has been hit hard by the economic recession, and that some of the problems discussed in this paper would be far less serious in prosperous times.

An attempt has been made to organize the discussion under a number of headings; however, a good deal of overlapping of problem areas and of interrelations of issues will be evident.

I. ENFORCEMENT OF REGULATION

Among the reasons for launching the review of motor transport regulations was the complaint by the regulated sector that the regulations were not being enforced effectively - that some were violating the rules with impunity.

A. General Intent of Regulation

The overriding purpose of regulation is to assure the public of adequate, reliable service at a reasonable price. As a rule, the regulating authority works from the premise that in order to provide adequate and reliable service the motor carrier must be able to earn sufficient income to maintain its equipment in good order and to earn an adequate return on its investment. To create the conditions to make that possible, the Motor Transport Board sets a tariff of tolls that may be charged and restricts the number of carriers that may serve a particular geographic area.

The underlying assumption is that too much competition would drive down prices to the point where all carriers would lose money, which might result in the area being left without service or with a monopoly carrier. Thus, in deciding on applications for operating authority by carriers, the Board will consider whether the area applied for is being adequately served already, and whether there is sufficient traffic into and out of the area to warrant the licensing of another carrier.

A PSV operating authority does, therefore, afford a measure of protection. In return, the motor carrier has an obligation to serve the area, to adhere to the rates and to

other rules or conditions the Board may set, and to provide the Board with statistical information.

B. Some Effects of Regulation on Common Carriers

The rules with which PSV operators have to comply impose costs on them. In the first place the registration fees for PSV (and commercial) trucks are considerably higher than for other trucks. Secondly, the obligation to serve the area specified in the operating authority means that truck runs have to be made with less than fully loaded trucks. There is a general perception in the industry that LTL traffic is often unprofitable and is cross-subsidized by truckload hauls. Restrictions with respect to area that may be served, commodities that may be carried, or type of equipment that may or may not be used further tend to increase costs. Documentation and reporting requirements may raise administrative costs and Board hearings may involve legal costs.

On the positive side, regulation reduces uncertainty for the carrier by restricting the number of carriers and by setting a schedule of rates. Thus regulation tends to enhance the returns to factors of production (labour and capital) in the trucking industry.

C. Incentives and Methods to Circumvent Regulations

As a general rule, one may expect that laws governing economic affairs will be broken if it is profitable to do so (society seems to attach no stigma to the breaking of trucking regulations). Whether it is profitable to circumvent regulations depends on how strictly the regulations are (or can be) enforced, the possible financial gains and the financial consequences of getting caught.

While the motivation of financial gain may be the same in all cases, the problem is complicated because we are not dealing with one rule or regulation but with many rules, and different participants in the industry seek to circumvent different rules in the pursuit of their aims. Hence, it is necessary to look at each group of participants separately and to examine how the regulations apply to each group and how violation of the rules by firms in one group may affect the wellbeing of persons or firms in another group.

In turn, we will examine the position of the shippers, the PSV carriers and other truckers who are not authorized carriers. Finally, we will discuss leasing and variation on lease arrangements.

1. Shippers

Shippers are not regulated; the Highway Traffic Act applies to motor carriers rather than to shippers. However, shippers constitute the clientele of the motor carriers and they have an interest in how the industry operates. Shippers are interested in the quality of service and in the cost of service. If the quality of service can be improved or the cost of transportation can be reduced by circumventing regulations, shippers may be expected to encourage such actions.

Generally speaking, regulatory requirements tend to enhance the quality of service rather than lower it. Shippers for whom quality considerations such as reliability, regularity, punctuality and care for the condition of merchandise are of overriding importance will not easily be tempted to engage the service of unauthorized carriers to save on transportation costs. Such shippers could include wholesalers who supply retailers in rural communities, central warehouses of chain stores and, generally, firms which regularly ship less than truckload lots to country points. Shippers in this category have few complaints about regulations; they are conscious of the fact that regulation contributes to stability, particularly in markets where the volume of traffic is low.

All shippers want to reduce costs as much as possible. Hence, all shippers will seek ways to keep down transportation costs. Shippers in the category discussed in the preceding paragraph are likely to seek discounts on published rates from regular PSV carriers; others may consider the alternative of doing their own trucking or they may enter into pseudo-lease agreements with owner-operators; still others may turn to improperly licensed carriers for deep discounts.

The pressure to reduce costs is greatest when the economy is depressed, as it has been for the past year or so. Unfortunately, the depressed economic conditions have also caused a sharp decline in the volume of traffic which has resulted in excess capacity in the trucking industry. The pressure exerted by shippers to reduce transportation costs has been answered with increased competition among PSV carriers, the invasion of the territory of regulated trucking by unauthorized or improperly licensed carriers, the employment of quasi-legal mechanisms to circumvent the regulations, and a serious deterioration in the working conditions and in the financial situation of owner-operators.

2. PSV Carriers

To the extent that economic regulation enhances returns to factors of production in the industry, the PSV carriers are the beneficiaries of regulations. They are therefore least likely to play fast and loose with the rules, since it is in their interest to preserve the regulated system. However, that does not mean that all PSV carriers abide by all of the rules all of the time. It must be remembered that all PSV carriers have restricted operating authorities, and that for the vast majority of carriers the restrictions are fairly severe. For some carriers, the temptation to accept business not provided for in their operating authority must at times be great. Particularly frustrating can be the designated commodity restriction as illustrated in the following example.

The Motor Transport Board will readily grant a PSV operating authority to transport unprocessed farm products (e.g. grains, oilseeds, sugar beets, hay, livestock) and peat moss. The designated commodity authority is the least costly and most easy to obtain. However, the restrictions on commodities severely limit business opportunities.

Take the example of a trucker who has obtained authority to transport farm products and peat moss interprovincially and internationally. He transports a load of flaxseed to

Minneapolis, Minnesota, or a load of peat moss to Pennsylvania. The restrictions on his operating authority require that he can have no return load except of a similar unprocessed farm product. The likelihood of his obtaining such a backhaul is extremely remote. Because an empty trip home is costly, the temptation is great to take on a load of other goods if he can get one. The deregulation in the United States has made it possible for Canadian truckers to take on truckloads for interstate and international transport. The only legal impediment preventing a Manitoba trucker from returning with a payload is the restriction on his operating authority issued by the Motor Transport Board in Manitoba. Not infrequently, truckers take the risk of returning with a backhaul in spite of the restriction on their Manitoba operating authority. It has happened that truckers had their operating authority checked at the highway inspection stations near the border, that they were prevented from proceeding, and that a tractor unit from an authorized carrier in Winnipeg had to come out to pull the trailer with cargo to its destination. The unfortunate trucker who got caught had to pay the authorized carrier for his "services" and was fined to boot. The incident illustrates both the incentive and the disincentive to violate a regulation.

3. Trucks Not Registered as PSV Carriers

Trucks with PSV registration account for only 1.5 percent of all trucks registered in Manitoba; commercial trucks make up 8.5 percent of the total, farm trucks 40 percent and other trucks 50 percent. It follows that even if only a very tiny fraction of commercial, farm and other trucks invade the territory of PSV carriers, the impact on the PSV carriers could be quite severe. Some owners of trucks who do not have PSV operating authorities may engage in for-hire trucking only occasionally, others may do it more frequently, and still others set out systematically to circumvent the regulations.

The occasional use of trucks for purposes not covered by their registration is probably widespread. It seems entirely reasonable to expect that few truck owners would "refuse to do a friend a favour" or would turn down an offer to make an extra dollar when the occasion arises. Such occasional unauthorized use of trucks is usually done on behalf of persons or firms which only occasionally have need to ship goods beyond the boundaries of the city or community where they are situated. Regular shippers are unlikely to rely on occasional truckers. Nevertheless, because of the large number of trucks in the Province the cumulative effect of the occasional unauthorized use of trucks on the for-hire trucking industry is probably significant. The impact is

likely to be more significant in the intraprovincial market than interprovincially or internationally. Because of the large number of trucks involved most of the occasional illegal trucking is bound to go undetected.

Farm trucks are increasingly used in for-hire transportation of cereal grains, oil seeds, sugar beets and fertilizers. F-plated semi-trailer trucks with maximum G.V.W. carry rapeseed from Manitoba to crushing plants in Alberta and return loaded with fertilizer. Farm trucks have all but crowded out properly licensed PSV carriers in the transportation of flaxseed from southern Manitoba to Thunder Bay and to crushers in Minneapolis. Indeed, spokesmen of the largest grain company in Manitoba labelled PSV carriers as "truckers of last resort". One would hardly consider such trucking ventures as integral to normal farm operations, but the wording of Section 169.1(1) to 169.1(5) is such that almost all transportation by farm truck of commodities related to agriculture can be made to look legal.

Deliberate (and perhaps frequent) violations of the regulations occur when the owner of a commercial truck sets out to solicit freight in order to reduce the delivery costs of his own goods or to increase his revenues. The same may be said of the use of T-plated trucks to transport goods beyond the radius specified in the Highway Traffic Act (within 20 km. of the perimeter highway for firms located in

Winnipeg, within 30 km. of other communities). Enforcement of the latter regulation seems particularly difficult, especially in rural areas of the Province. Since the incentives to break the regulations are considerable, it seems reasonable to assume that they are frequently violated.

Whether casual and occasional, or deliberate and frequent, the above violations of the Highway Traffic Act are straightforward and easily identified. A person who is apprehended when committing such an offense is easily charged, and conviction is almost automatic. Stepped up policing could reduce the number of violations. Although one might question the wisdom of employing the resources necessary for that purpose, enforcement is possible when it involves clear cut violations as those discussed above. It is far more difficult to deal with the elaborate circumventions of the Act. The most common legal instrument is a lease agreement, the human instrument is an owner-operator, and the motive, as always, is economic.

4. Leasing and Variations of Lease Arrangements

Leasing of equipment (as opposed to purchasing) became popular in the early 1960's partly because it would reduce the capital requirements of the lessee while providing the lessor with significant tax write-offs. Thus

lease arrangements could reduce the overall financial charges on industrial equipment. In the beginning most leasing arrangements were executed through banks and acceptance corporations. Today, many companies, including trucking companies, have created their own leasing corporations.

Owner-Operators

A profitable idea spreads quickly. Some trucking companies began to extend leasing arrangements, with some adaptations, to their drivers. These arrangements would in fact extend to the supply of labour. The advantages of such arrangements to the company can be substantial and may include:

- Elimination of the company's risk and reduction of its total capital requirements by making the driver responsible for monthly payments on the truck.
- The risk and cost of maintenance are shifted from the company to the driver.
- There is an incentive for the driver to work harder since his income is dependent upon the miles driven and/or the freight carried. Generally, he is doing piece work without base pay or overtime bonuses.
- Since the driver is no longer an employee, the company is not responsible or the payment of CPP and UI premiums or for vacation pay.

- The bargaining power of the labour union is reduced as drivers are converted from employee to "owner-operator".

The benefits of such arrangements for drivers are probably more psychological than economic; the attraction of owning one's truck and of feeling "independent"; aspiration to build one's own business; to some extent, the regulatory system which makes entry into the industry difficult may encourage such arrangements. Whatever the motivations on the part of owner-operators, the effects of such arrangements on working conditions in the industry will be discussed later. We must first deal with the effects of leasing and company-driver arrangements on enforcement of regulations.

Leasing and the Highway Traffic Act

Section 6(1) of the Highway Traffic Act provides that a motor vehicle or trailer must be registered by the owner, with the sole exception of farm trucks in Subsections 6(26,27,28,29). Every relevant section in Part VIII of the Act (which deals with Public Service and Commercial Vehicles) uses the expression "the owner of a public service vehicle" or "the owner of a commercial truck". The only exception in Part VIII deals with the leasing of drive-yourself trucks

which are registered under The Taxicab Act (Section 258.1(1-7)). It would appear that all leasing arrangements in the trucking industry are of dubious legality.

However, the legal mind is inventive. The agreements between trucking companies and so-called owner-operators are technically not lease agreements but simply "agreements" or "contracts". By the terms of the agreement the company does not lease or buy the vehicle and does not assume any financial obligations pertaining to the ownership of the vehicle. Quite the contrary, the operator is responsible for any liens or encumbrances on the vehicle. Copies of the agreements in use by two large trucking companies are shown in Appendix I. It is evident from both contracts that the companies acquire complete control over the use of the trucks and become "owner" for the purpose of satisfying the requirements of the legislation while assuming no financial obligations connected with the ownership of the trucks.

It is interesting to note that of the four kinds of trucks defined in the Act, farm trucks are least likely to be leased yet only these may be registered in the name of the lessee. In 1982, only 0.2% of all farm trucks over 4,000 kg were leased while 38% of for-hire trucks, 13.4% of commercial trucks and 3.3% of other trucks over 4,000 kg were leased (System Characteristics, p.5).

Reluctance to Change

Despite this situation, there has been considerable reluctance to seek changes in the legislation as it pertains to leasing. Why? Among the most likely reasons:

1. If leasing were permitted in the legislation, the power to grant operating authorities would pass from the Motor Transport Board to the current holders of operating authorities since these franchised operators could farm out their business to one or more lessees and collect royalties on their franchises.

2. The regulatory system could be turned into a shambles if a company, with a number of registered commercial trucks, could lease trucks (and drivers) on an as-required basis to other shippers who would otherwise rely on PSV carriers.

Accordingly, only two of the organizations with which the Task Force has held discussions to date have suggested legislative changes in the area of leasing. Also, rather than challenge leasing practices in court or recommend legislative changes, the agencies responsible for regulating the trucking industry have simply tailored their procedures to suit the commercial practices of firms in the industry. Companies have been and are allowed to register in their

name motor vehicles which they do not own. Indeed, there is at least one trucking company in Manitoba that does not own a single truck. Rather than advocate changes in the legislation (with the attendant uncertainties), the regulatory agencies have permitted the companies to take full advantage of leasing arrangements while protecting the privileged position of trucking companies within the existing regulated system.

Nevertheless, the Registrar's office in Manitoba has recognized the need for identifying the effective owner of a vehicle used in a lease arrangement by requiring the names of both the lessor and lessee to appear on the registration certificate. The registration certificate identifies both parties and indicates that the vehicle is "leased from" or "leased to" the registered owner.

Table S3 in System Characteristics shows that similar agreements are used for commercial and other trucks. Hence, in spite of the fact that the Highway Traffic Act makes no allowance for the registration of trucks by persons who are not their owner, companies are registering trucks which they do not really own.

To this point, the discussion has focused on leasing and variations thereof, with little comment on limits imposed by the Highway Traffic Act. It should, however, be noted that

operating certificates could be required of all rented vehicles pursuant to the definition of compensation in Section 254 of The Highway Traffic Act.

Private Carriage

The Private Motor Truck Council felt that private carriers should have the same access to leased operators as regulated carriers, but without the necessity of holding specific operating authority or obtaining the approval of the Board. Presently, PSV operators engage lease operators to undertake transport activities in accordance with the operating authorities held from the regulatory Boards. Private carriers felt they should be able to haul their "own goods" or distribute merchandise to various agents using leased operators as sub-contractors or contract carriers. Currently, private carriers are required to demonstrate that the drivers used in their trucking activities are full benefit employees and are not acting as unauthorized for-hire carriers.

Buy-Sell Operations

The regulations on for-hire trucking are further being circumvented by so-called 'Buy-Sell' arrangements whereby ownership of the cargo is temporarily transferred from the shipper to the carrier. There is a perception that if the

carrier is the "owner" of the cargo he does not require an operating authority to carry general freight from the point of loading to its destination. Hence, commercial trucks or PSV operators authorized to carry exempt commodities only may carry general freight anywhere provided they "own" it. The complaint of legitimate common carriers is that interlopers using fictitious purchase agreements are cutting into their business and that governments are not making serious efforts to stop them. It must be remembered, however, that decisions on whether such agreements are valid are made in court, and not by highway inspectors. In other words, such trucks simply cannot be "taken off the road".

Frustration of Enforcement

A highway inspector who thinks that a trucker is operating without proper authority may fill out a highway inspection report indicating the nature of the suspected violation. The Traffic Inspection Branch may consult with the Motor Transport Board and may or may not decide that further investigation is warranted; if, after further investigations it appears that the Act has been violated, discussions must be held with the Civil Litigation Division of the Department of the Attorney-General to determine whether there is a reasonable chance of successful prosecution. If the case proceeds to court and if a conviction is obtained, a fine of between $200 and $1,000 may be assessed.

While a conviction applies to one particular case only, and does not put a company out of business, it could conceivably lead to a rash of prosecutions. On the other hand, it would send lawyers scurrying to find ways to correct the deficiencies in the contract. As one frustrated administrator put it, "Even if we win a case, all it does is prove to the culprit that he should hire a better lawyer."

Companies that obtain trucking business by means of fictitious purchase agreements also employ owner-operators; therefore their ownership of the trucks is as fictitious as their ownership of the cargo. A prosecution on the grounds that the purchase agreement is a mere expediency to circumvent the requirement for a proper operating authority could conceivably lead to the judgement that the ownership arrangements respecting both the cargo and the truck are equally invalid.

A judgement declaring the standard arrangements between trucking companies and owner-operators invalid would be most embarrassing to the Motor Transport Boards and the Registrars of Vehicles in Manitoba and in other provinces who have for years accommodated the registration of owner-operator trucks in the name of companies in spite of what the legislation seems to say. Such a judgement would be most disturbing to trucking companies which rely heavily on owner-operators to carry their business; it could prove to be very costly,

indeed. For the owner-operators themselves such a judgement would be unmitigated disaster because they would be left without work and with a truck they were not allowed to use.

Evidently, legal or quasi-legal instruments in common use in the trucking industry have turned enforcement of the regulations into a complicated problem. While it is conceivable that a more vigorous effort at enforcement could reduce the number of clean-cut violations (such as the use of T and F-plated vehicles in for-hire carriage), the resources required may be out of proportion with the benefits to be achieved. As long as incentives to circumvent the legislation are sufficient, ways will be found to do it.

For obvious reasons there are no data on the volume of freight carried by unauthorized or improperly licensed truckers. No carrier can be expected to report to the Motor Transport Board the volume of goods he was not supposed to carry. Judging from the complaints received by the Motor Transport Board and by the Minister's office "illegal" trucking has made substantial inroads in the markets of the regulated carriers.

It seems appropriate to conclude this section on enforcement of regulations with a quotation from the Ontario PCV Review Committee's Discussion Paper on Responsible Trucking:

With the maturing of the trucking business, the market has started to segregate itself out, and the variety of competitors within the industry have indeed mushroomed during the 1970's; the very strong growth of private carriage and leasing alternatives being the best examples. Also there has been the more recent explosive growth of couriers and transportation brokerage (both of which have probably generated new freight), and the growth of contract services, using a tendering or bidding process.

Most of this competition escapes the burdens of regulation, and it has eroded the domain of the traditional regulated carrier. Some are exploiting the system of regulation itself to carve their niche, such as the intermediaries - and some are calling for liberalization of regulation so the new services can be expanded further, such as private carriage. The trends do not favour continuation of existing regulation.

In the end, the pressures on the economy have shown up in pervasive competition pressures within trucking; and far from providing shelter from competition, regulation itself has become an instrument to provide shelter for competitors. The "traditional" regulated carriers have not been able to meet the competition within the Act, and in response have turned to "bending the rules" themselves where necessary.

The government has failed to close the door on this kind of competition. The incentives to bend the rules or find loop-holes are enormous, partly because of the inflexibility of the current system and the drive to out-manoeuver opponents.

All of this is seen as creating an unjust and an unfair situation. Whatever it is that the current government rules are supposed to do, and whether or not they achieve it, it appears that competition is being waged according to a set of rules different from the PCV Act. For those with any regard for the obligations, privileges and commercial order supposed to be created by the laws, the situation is untenable. The law is discredited and those that conform bring upon themselves burdens not suffered by their competitors, and for which there is no compensation.

Throughout the examination of issues a universal refrain we have heard was that whatever the rules, there must be higher compliance in the future, in order to restore fair competition.

II. Working Conditions and Safety

Working conditions are an important issue in the trucking industry because they directly affect the well being of thousands of drivers and their families, because they are a significant factor in the operating costs of the trucking companies, and because working conditions, more than any other factor, have an impact on highway safety.

Manitoba's Employment Standards Act makes no special provisions for employees of trucking firms. Hence, the provisions of the legislation regarding hours of work, overtime pay, vacation pay, etc. apply to intraprovincial truck drivers as they would to other employees of firms which are under provincial jurisdiction. However, since all of Manitoba's larger trucking companies operate interprovincially as well as within the province, their drivers are subject to the Canada Labour Code rather than the provincial Employment Standards Act.

The Canada Labour Code itself does not deal with hours of work for truck drivers. This is covered in Motor Vehicle Operators' Hours of Service Regulations which are made under the Labour Code. The following quotations are from an article by Dr. Wayne Roberts in the Sept-Oct, 1982 issue of Canadian Driver - Owner magazine:

> As a condition of receiving his licence, a carrier agrees to uphold and be responsible for these regulations. All

employees and contractors, including owner-operators, are covered. These regulations set limits of ten hours per day on the road and 15 hours on duty. No driver is to exceed 60 hours in a seven day period.

Exemptions to these limits are available under Section 11, whereby 15 hours on the road and 18 hours on duty are allowed each shift. Even under these exemptions, no driver can exceed 70 hours per week on the road in seven days.

Section 11 exemptions are pretty well there for the asking, and other legalistic phrases such as "reasonably practicable" pepper the legislation, providing enough loopholes to drive a truck fleet through.

On top of that, enforcement of the legislation is a dead letter. There have been three prosecutions for hours violations in the last 18 months. A staff of approximately 110 people enforce trucking and all other federal legislation, covering workers in banks, grain elevators, airports and communications. If they find time to deal with trucking, they are only permitted to check work orders at terminals. They have no authority to enforce the legislation anywhere else. Although the actual legislation is still pending, the federal minister has already informed carriers that log books are no longer required....

Another section of the Canada Labour Code deals with the payment of truckers for overtime. Introduced in 1972, this section requires that time-and-a-half be paid to long-haul drivers after 60 hours on the road. Owner-operators are not covered by this legislation, because they are classified as self-employed. This treats long hours as a purely personal decision of the driver-owner, not as a condition of his contract arrangement with a carrier.

A 1981 decision by the Canadian Labour Relations Board maintains the fiction of voluntary and personal acceptance of long hours. When a young driver refused to carry two roundtrip loads from Oshawa to Michigan, he was fired. The driver claimed that the fatigue caused by long hours was a violation of health and safety laws. The Board ruled that health and safety laws only dealt with equipment and environment, and not fatigue. The Board, in its wisdom, decided that fatigue and stamina could not be measured. There are limits to both of course, and pushing them threatens both the driver and other motorists. But the law is silent. It recognizes no risk.

It may be added that Labour Canada has granted exemptions to 17 companies in the Prairie region which includes Manitoba,

Saskatchewan and Northwestern Ontario. The following is an excerpt of an exemption granted by Labour Canada to a company operating in this region:

> In accordance with the provisions of Section 11 of the Canada Motor Vehicle Operators' Hours of Service Regulations, I am pleased to grant an extension of the hours of service for your motor vehicle operators as follows:
>
> a. the hours of driving of a motor vehicle operator per work shift shall not exceed 15 hours;
> b. the hours on duty per work shift shall not exceed 18 hours;
> c. the hours on duty in any period of seven consecutive days shall not exceed 70 hours; and
> d. the total hours of service of a motor vehicle operator shall not exceed 3,000 hours during the 12-month period beginning January 1, 1980 and ending December 31, 1980.

At present, Manitoba has no legislation regulating the hours of driving. As mentioned, the Employment Standards Act requires overtime rates to be paid to employees who work in excess of 40 hours per week. However, the Act does not apply to owner-operators.

The unenlightened provisions of the federal Hours of Service Regulations and the absence of provincial regulations are more surprising if it is realized that decades ago the Manitoba Highway Traffic Act did contain provisions for regulating working conditions.

An amendment to the Act assented to March 15, 1938 provided that the driver of a PSV vehicle or commercial truck "including the owner if he is the driver, shall not be on duty in driving more

than 9 hours, nor in any capacity more than 12 hours in any 24 hours period, nor on duty more than 6 days per week". The Motor Carrier Board was given the authority to "regulate the hours of employment and the rates of wages of employees of motor carriers and fix the maximum hours of employment and minimum rates of wages of such employees". Further, Section 167 (3) (G) provided that a certificate may be conditioned for "the payment of reasonable wages and observance of proper conditions of service in respect of the employees of the holder". In the 1941-42 session of the Legislature the distinction between "driving" and "being on duty" was removed, and the maximum hours to be on duty in any capacity were reduced to 10 hours in any 24 hour period.

When the Act was rewritten in 1966 all references to hours of work and labour standards were dropped. It will probably come as a surprise to many readers that legislation respecting employment standards in motor transport was far more advanced and enlightened in the 1930's than it is in the 1980's.

Labour unions such as the Canadian Brotherhood of Railway Transport and General Workers and the Teamsters no doubt do their best to fill the void. However, the absence of effective legislation is a hindrance, even for strong unions. They feel that they should not have to bargain down from 70 hour work weeks or 18 hour work days. Moreover, the bargaining position of the unions is weakened by the owner-operators who now account for a large proportion of the drivers in most companies.

Owner-operators claim that they are forced into driving excessive hours by the companies who, in order to get the most out of their "independent" drivers are demanding hours of service far in excess of anything allowed in other industries. In his submission to the Ontario Truck Safety Commission, the President of the Independent Truckers Association of Canada (ITAC) noted that it is the carriers who apply to the federal Department of Labour for extended hours of work. He asked "how seriously can you take the claim of a common carrier, applying for this type of permit to run an owner-operator 18 hours a day, that he is interested in safety on our highways?"

According to ITAC excessive driving hours is a symptom of the problem faced by the owner-operator. The use both of pills and excessive speed are a fact of life for the independent operator because of the rate structure imposed by the industry. ITAC contends that companies pay a rate per mile that is lower than the actual cost of operating the trucks. Thus owner-operators are forced to run as many miles as they possibly can in an effort to stay in business. Even then, they often cannot set aside the necessary money for depreciation or they skimp on maintenance, or both. Unions and ITAC are agreed that long hours of work and inadequate maintenance constitute serious safety hazards in highway transportation.

As for the companies, the downturn in the economy has placed them under severe pressure to reduce costs. In addition the regulated carriers are faced with increased competition from interlopers as

discussed earlier. The combination of reduced demand and increased supply of transportation services has resulted in excessive competition. Under these conditions companies will try to get the most out of their equipment and employees and will drive hard bargains with their owner-operators. As far as the companies are concerned, this is not the time to talk about improving working conditions.

Brief mention may be made of other factors affecting the safety and health of drivers. One of these is the pressure to meet the time schedule. One of the advantages claimed by trucking companies over rail transport is speed. So-called time sensitive freight forms a significant part of the motor transport business. An examination of the schedules of trucking companies leaves little doubt that the industry is making the most of its advantage and that companies compete on the basis of fast and efficient service. Below are some examples of elapsed time between shipment from Winnipeg and delivery at various destinations:

	Distance (km)	Time (Hours)
Winnipeg to Calgary	1411	17
Winnipeg to Edmonton	1344	19
Winnipeg to Vancouver	2398	27
Winnipeg to Toronto	2108	28
Winnipeg to Montreal	2334	32

Undoubtedly these schedules are a source of satisfaction to the shippers. It must be realized, however, that the onus for performance falls on the drivers, be they employees or owner-operators.

For example, trucking companies are offering overnight service between Winnipeg and Calgary; shipments leaving Winnipeg at the close of business, 6 p.m. central time, will be delivered in Calgary at the opening of business, 9 a.m. mountain time the following morning, for an elapsed time of 16 hours. At 90 km per hour, the maximum speed for trucks, it would take 15½ hours of driving. That leaves one-half hour for the driver to pick his way through Winnipeg and Calgary, to slow down when passing through towns and cities along the way, and for a meal and rest! It is alleged that companies have threatened drivers with stiff penalties if they fail to meet the schedule. Whether that is true or not, schedules exist to be met, and meeting such tight schedules places considerable pressure on the vehicle operators.

One other factor affecting the workers' health which was brought to the attention of the task force is the noise level inside truck cabins. It is said that the noise level in the typical truck tractor cabin is several decibels above the maximum level permitted in work place safety and health regulations. Apparently, such legislation does not apply to motor vehicles, although truck drivers spend more consecutive hours in their enclosed work place than most factory workers. One would think

that over the long run the constant noise must have a detrimental effect on the health of truck drivers.

It seems fair to conclude that working conditions in the trucking industry leave a lot to be desired. There are no provincial legislated standards for working conditions for drivers, and the federal code is so poor that it does not matter that it is not enforced. Mention has been made earlier of the fact that owner-operators are not covered by Workers Compensation and employer contributions to Canada Pension Plan and Unemployment Insurance. Fierce competition in the industry has contributed to a worsening of working conditions, particularly for owner-operators. There can be little doubt that the stress under which drivers operate is not conducive to highway safety.

III. Competition

Much has already been said about competition in the preceding sections. In fact, competition and the ways in which it is waged are at the root of many of the problems in the industry.

Competition and regulation are not very compatible. From the consumer's point of view regulation is necessary where competition is lacking; the more competition the less need for regulation. In economic theory, free and perfect competition is considered the ideal form of economic organization; it would yield the maximum in consumer benefits without regulation.

In spite of the many advantages flowing from competition, governments sometimes consider it necessary to impose regulation. For example, competition in an industry may have undesirable side effects such as low wages and poor working conditions for the workers, frequent bankruptcies, unreliable service, neglect of isolated markets, etc. Also, conditions change with the passing of time; public interest may demand regulation where none was required before or vice versa.

It has been observed that regulated carriers have experienced increasing competition from interlopers; designated commodity carriers soliciting general freight; commercial trucks, farm trucks and others getting into for-hire transportation. Furthermore, rising energy prices have improved the competitive position of the intermodal systems of CN and CP. These are the sources of competition identified by the regulated carriers who often refer to it as "unfair" or "illegal" competition.

However, it should be noted that competition among the regulated carriers has increased as well. One source of intensified competition is the increased capacity created by the owner-operators. Because carriers can engage the service of additional owner-operators without having to assume additional financial obligations, the creation of over capacity is not only possible but most likely. Indeed, it becomes to the advantage of each company to have more owner-operators on contract than are needed at any given day, because it strengthens the company's bargaining

position. Rational economic behaviour dictates that each company create excess capacity in its fleet; increased competition among the companies will follow.

A second source of increased competition among the regulated carriers is the successive increases in weights and dimensions of trucks. Each firm reasons, correctly, that unit costs can be reduced by increasing the payload. Truckers are forever lobbying governments to increase the maximum gross vehicle weight and truck size, and to permit double or even triple trailers. What the firms appear to overlook is that with every increase in GVW the total capacity of the transportation system increases as well. Unless the aggregate demand for transportation increases at the same rate, excess capacity is created. The logical outcome of excess capacity is increased competition and price cutting. If it is recalled that from an industry point of view the chief purpose of regulation is to keep competition within bounds, the lobbying for increased weight limits may not be rational. The quickest and least painful way to reduce excess capacity and restrict competition in the industry is to sharply reduce the permissible weights of trucks on the public highways.

IV. Government (Regulatory Authorities)

The transportation industry is affected by all kinds of decisions by government and government agencies. The issues discussed under

this heading are those raised by organizatons with which the Task Force has had discussions and which have not been discussed under other headings.

A. Regulation

None of the organizations in principle are opposed to regulation but opinions vary on the degree of control and on the way in which regulatory agencies operate.

Shippers are interested in results: satisfactory service at acceptable prices. Their attitude tends to be that where competition produces those results, regulation is not required. They suggest that small communities and sparsely populated areas might not be able to keep a number of competing firms in business and that regulations might be required. However, no evidence has been or can be provided that service to small communities is adversely affected by deregulation. It was suggested that open competition was preferred in bulk transport.

Other organizations preferred the stability of a regulated environment to the uncertainties that would flow from deregulation.

All organizations expressed the view that no regulations should be imposed unless they are enforceable and will be in fact effectively enforced.

With respect to the workings of the Motor Transport Board the opinion was expressed that the process to obtain an operating authority (or changes therein) was time consuming and expensive. There was criticism that there appeared to be no set of criteria on which Board decisions are based, and that the Board should give written reasons for its decisions. It was suggested that perhaps the time had come to redefine the role of the Board.

A number of small truckers of designated commodities expressed the opinion that there was no point in applying for operating authorities because the Board would not grant them anyway. In their opinion the Board favoured the established companies, or "the big boys".

Disappointment with decisions of the Board has also led to charges of discrimination, particularly with the Board's granting or refusing to grant authority for "tacking". If nothing else, such issues point to the difficulties of reconciling the administrative allocation of the right to do business with the freedom to sell and purchase property (business in this case). Further conflicts may arise after a transfer, between the need of the Board to be consistent in

administrative decision making and the requirements of economic efficiency of the company.

There can be little doubt that the growing complexity of the regulatory system and the legalistic procedures and precedents accumulated over decades all but block the door for the uninitiated. Over the long run, administrative allocation of the right to do business favours those who are already in the industry and who employ the law firms that have built up expertise in the field of regulation. To restore equality of opportunity, all regulated systems should perhaps be thoroughly reviewed every ten years or so.

B. Weights and Dimensions

Mention has been made earlier of the effects of changes in weights and dimensions on competition in the industry.

Industry associations never tire of emphasizing the need for uniformity of weights and dimensions across Canada. Invariably, they call for uniformity upwards, never downwards. Thus they press Manitoba to raise its maximum GVW to Ontario's level, not lower it to Saskatchewan's or Minnesota's. Although there is more truck traffic between Ontario and the U.S.A. than between Ontario and Manitoba, the CTA does not suggest uniformity between Ontario and the U.S.A. The point is that throughout most of the U.S.A.

80,000 pounds is the maximum GVW, compared with 140,000 pounds in Ontario, 124,600 pounds in Manitoba and 118,000 lbs. in Saskatchewan and Alberta. It would seem that the trucking associations have a strategy of putting pressure on one province, Ontario, to raise the weight limits and then pressure other provinces to follow suit in the name of uniformity.

While raising the maximum load limits, provincial governments have failed to provide the money necessary to upgrade the highways and roads to carry the increased weights. The result is a deterioration in road conditions. It has been suggested that it would be better for the roads, and perhaps better also for the trucking industry, to reduce the weight limits on Manitoba's highways to the 80,000 pounds maximum which is standard on interstate highways in the U.S.A. Since the interstate highway system is the only alternative to traffic through Manitoba, weight and dimension standards compatible with those in the United States make sense. It would reduce the cost of highway repairs, reduce the excess capacity in the industry, and it would thus contribute to financial stability in motor transport. A similar suggestion has been made that since a GVW limit of 118,000 pounds is currently the 'national' defacto standard, this GVW should be formally adopted as the uniform national limit.

Ever increasing truck GVW's are distorting the relative competitive positions of truck and railway transportation. Since considerable investment has already been made in the railway infrastructure to carry heavy bulk commodities, one could well question the expenditure of public funds to duplicate this capability in the highway system.

In spite of the fact that axle load limits and GVW are already higher than what roads and bridges have been designed to support, violations of weight restrictions occur frequently. Sections 63(2) and 82(7) of the Highway Traffic Act place the responsibility for violations on the driver or, if the driver is an employee or agent, on the employer of the driver.

The Independent Dump Truck Association is of the opinion that it is not always fair to hold the driver or his employer responsible for violations of weight restrictions. This is particularly true in cases where a trucker hauls debris from demolitions or clay from excavations for a contractor. In these jobs neither the driver nor the owner of the truck has any control over the loading: the control rests with the contractor. Since the trucker gets paid per loaded trip, it is not to his advantage to overload. It is the contractor who stands to gain from overloading. Yet it is the trucker who is fined if he is caught with an overloaded truck on a

highway. Perhaps the Act should be amended to place part of the responsibility on the contractor.

Other factors to be considered when decisions are made on weights and dimensions of transport vehicles are how increased weight and size affect working conditions (the health and safety of the driver, and employment) and how they affect highway safety. Common sense suggests that increases in size and weight of the vehicles must necessarily add to the stress on the driver. With respect to highway safety it has been suggested that the only significant factor is the length of time it takes for other vehicles to pass a truck with one or more trailers on undivided highways. Engineers may see it that way, but they may overlook the fact that many drivers are intimidated by these huge "screaming monsters"; being in a state of fear is not conducive to safe driving.

Finally, the differences and varying increases in length of trailers between jurisdictions have caused difficulties for CN and CP piggyback operations.

C. Taxation

The differences in registration fees for different classifications of trucks have been discussed elsewhere. It

has been noted that is it difficult to justify these differences, although a reading of the history of regulations helps in understanding how they came about.

Initially, registration fees on public service vehicles were raised to pay for the administrative costs of the MPUB. Next registration fees on commercial trucks were raised because they could be considered in competition with common carriers. Local for-hire trucks were not regulated by the Board and hence did not have to contribute to its cost. Local private trucks were not regulated and did not compete with regulated carriers; hence they were exempted as well. Trucks used to haul sand and gravel for the construction of highways were exempt because to put a higher tax on them would simply add to the cost of road construction. Farm trucks were exempt from the higher tax because they could only be used to haul the farmer's own produce and goods used on his farm. As long as the extra registration fees on PSV and commercial trucks merely served to offset the administrative cost of the regulatory authority, the classification was defensible, even though it was based on shaky logic.

However, over the years the small additional charge on PSV and commercial trucks has become a substantial tax on these vehicles which is not related to the cost of operating the Motor Transport Board. In 1981-82, revenues collected from the licensing of PSV, commercial trucks and intermunicipal

liveries amounted to $6,781,542, some twenty times the cost of operating the Motor Transport Board. The differences in registration fees for the various classifications of trucks are very large. For vehicles with the maximum GVW (56,251 - 56,500 kg), the registration fees for PSV and commercial trucks are $3,521 per year, for other trucks $838 and for farm trucks $465.

While the differences in taxation have become larger, the differences in the use to which the various classes of vehicles are put have narrowed. Local use is now generally defined as within 30 km of the community where the registered owner resides, and there is no effective way of policing the limit. Dump trucks are all T-plated even though they are used for purposes other than "...to haul sand, gravel or other material for use in the construction and maintenance of a public highway"; farm trucks may haul farm commodities for compensation, may use leased equipment and account for a significant proportion of long distance transportation of grains, oilseeds and fertilizers.

Clearly, an overhaul of the classifications system for trucks is long overdue. Ideally, registration fees for trucks should be strictly based on gross vehicle weight; who owns or registers the truck, the nature of the business of the owner or the kind of goods it may carry should be irrelevant for the purpose which, after all, could be considered to be to

raise revenue for the construction, maintenance and protection of the highway system, and to pay for the cost of regulating users.

The railway companies raised the issue of the general level of subsidy built into highway transportation. A study of highway use and user charges paid (registration fees and fuel taxes) in southern Ontario showed that trucks did not pay their proportional share of highway use. A more comprehensive study is underway.

The issue is of some importance to the railway companies (who are also involved in road transport) since a move by governments to user charges more closely in line with actual costs would affect the investment decisions of the railway companies.

This is a complicated issue which will require much more study.

D. Setting Standards

Shippers are of the opinion that the terms and conditions on the standard bill of lading are weighted in favour of the carrier. They have suggested that consideration should be given to setting out the obligations of the carrier toward the shipper, "a shipper's bill of rights", and that there

ought to be minimum service standards and stricter requirements respecting claim settlements, insurance and fidelity bonds. It was also suggested that consideration be given to bring freight forwarders and break bulk operators under some form of regulation.

E. Rate Setting

The Motor Transport Board sets a standard tariff of tolls for transportation within the Province. Rates in interprovincial and international transport are determined by competition. Shippers are of the opinion that where competition prevails no rate setting is required. Within the Province the Board would not have to set rates for truckload shipments and for shipments of 20,000 pounds or more. Shippers do think, however, that all rates should be published.

There should be no price discrimination between shippers who tender the same or similar shipments to or from points of equal distance. Special agreements between shippers and carriers are to be filed with the Board for approval. The Board normally accepts the special rates which then become available to all shippers who are able to use the services of the filing carriers.

Some carriers fear disclosing special agreements to direct competitors through the filing process. They contravene

existing regulations in the belief that the secret rate agreements will not be disclosed to their competitors by the shippers.

A disregard for proper filing procedure creates a setting for favouritism, discriminatory pricing and undue advantage for propitious shippers.

F. Education

Several organizations made the comment that more rigorous standards should be set for the training of drivers and of owner-operators. Besides formal training there should be properly designed and supervised apprenticeship programs for truck drivers. It was also suggested that a business course be designed for owner-operators. Some suggested that passing a business course be a requirement for licensing (future) owner-operators. Ontario is considering making this requirement a cornerstone of their revised regulatory framework.

G. Rural Communities

Towns, villages and communities throughout Manitoba appear to be adequately served by the trucking industry, assuming that the number of complaints directed at local officials can be used as a measure of satisfaction. However, local officials

stated that it is difficult to judge whether silence means that rural transport users are satisfied with transport services, or if they are merely accepting their allotted fate. While community leaders expressed a wish for choice in the number of carriers available to shippers, they thought it also important to protect and promote rural truck operators. The local truckers not only contribute as active businessmen and social members of a community but their physical presence allows a higher level of personalized service to be provided to the communities in which they are domiciled. The importance of truck transportation was noted as becoming more prominent with time.

In addition to the benefits of the personalized service of some local truckers, the trucking industry was noted as having a larger role to play while the railway branchline system is reduced. Truck transport is the only mode of access to many communities throughout Manitoba.

OPTIONS IN MOTOR TRANSPORT REGULATION

The following section is presented to provide a focus for discussion of the direction which regulation of motor transport might take. It must be kept in mind that this is a discussion paper only, and that suggested possible solutions to perceived problems are preliminary. The Task Force invites reaction, comments and suggestions from the industry and the public. To the extent that some of the suggested changes may be controversial, reaction will no doubt be forthcoming.

In considering the various options the Task Force thought it important that any regulatory system should meet, as much as possible, the following objectives:

- The organization and process involved in regulation should be simplified.
- The process of applying for and receiving decisions on operating authorities, registration, etc., should be simplified and consolidated.
- Contradictions in regulations should be removed.
- Regulations should be imposed only if they can be enforced efficiently, effectively and cheaply.
- Regulation should contribute to improved highway safety.
- Manitoba regulations should be reasonably compatible with those of other jurisdictions.

- Limits on weights should not exceed those for which the roads and highways were designed.
- Regulations should be imposed only if the benefits of the specific regulation exceed the costs entailed by society.
- There should be equality of taxation of road users; i.e. registration fees for motor vehicles should reflect the weight of the vehicles and the stress they put on the roads, rather than reflect the occupation of the owner.

THREE OPTIONS

Three possible options for regulation were developed that would meet those objectives to various degrees. The first option is to reduce regulations to the minimum required to ensure safety and responsible behaviour in motor transport, leaving matters such as rates and frequency of service to be settled through competition among firms. The second option reserves a somewhat larger role for regulatory authorities; for example, transportation to and from certain areas would remain protected in order to ensure service. The third option is to retain the regulated system as it has developed in Manitoba over the past 50 years, but to streamline the regulations so that they correspond to present day practices. We may call these options the minimum regulation option, the medium regulation option and the option of maximum regulation which is acceptable and enforceable.

It should be emphasized that the three options have much regulation in common. Regulation is a matter of degree; the word "deregulation"

which has been bandied about so frequently in recent years is often misunderstood. Like other businesses, transportation must abide by rules set by law and must conform to standards set by law. Rules and standards may change, but they cannot be abandoned altogether. It will be evident from the discussion below that even at the minimum level a substantial amount of regulation is required.

Although most of the differences between the minimum regulation option and the other two options are differences of degree, there is also one fundamental difference. The system which has been in place for more than 50 years (and which would be perpetuated to a greater or lesser extent under options two and three) is a protected system. Entry into the business of transportation is not open to all. Essentially, Part VIII of The Highway Traffic Act establishes administrative procedures for the allocation of the right, or better, privilege to carry on the business of transporting specified classes of freight to and from specified areas in the province. Under the medium and maximum enforceable regulation options the principle of allocating the right to do business by an administrative body would be retained. As a consequence the inevitable clashes between proprietary interests of firms in transportation (or wishing to get into transportation) and the administrative body would continue as well. Under option one there would be no economic entry restrictions intraprovincially; any person or firm resident in Manitoba with adequate equipment and adequate insurance could provide transportation service anywhere in the province. To be compatible with other jurisdictions, control over

interprovincial and international transportation would have to be exercised in all three options.

ROLE OF GOVERNMENT

The three options are reflections of the different views held by people of the role of government in highway transportation and, more generally, in economic affairs. The ongoing debate over "deregulation or reforming regulation" is often conducted on an ideological basis. There is, however, also a practical side to the issue:

- Are the rules reasonable and consistent with the objectives being sought?
- Are the rules enforceable?
- Are the benefits derived from regulation worth the cost imposed on society?
- Do the benefits accrue to the target group or are they largely deflected to unintended beneficiaries?

Finally, the regulatory system of motor transport was devised and introduced more than fifty years ago when 55 percent of Manitoba's population lived in rural areas, and when trucks were few and had limited capacity; public concern to assure service through regulation was therefore quite natural. If it is considered that the volume of freight carried in Manitoba by for-hire truckers has risen from 55,000 tonnes in 1930 to 3.5 million tonnes in 1980, the need for regulation

to assure that rural communities will have access to transportation services seems less obvious.

Some insight into the changing role of regulation may be gained by comparing the role of the Motor Transport Board in regulating intercity buses with that in regulating the trucking industry. With respect to passenger services, the Board still fulfills its original public utility role: assessing services to communities, prescribing rates, approving fares for passengers and parcel express, setting standards, etc. One reason is that passenger service on most routes is a regulated monopoly and the Board is the arbiter between the public and the firms providing the service. Most people will probably agree that the Board performs an essential function in regulating intercity passenger services.

In contrast, most of the work of the Board with respect to trucking consists of hearing applications for entry into the industry, hearing applications to expand services, arbitrating conflicts between firms over the right to serve a particular territory, and hearing cases against truckers who have exceeded their authority (show cause hearings). In short, most of the Board's work has to do with the allocation of rights to do business and with limiting competition. With respect to trucking services the Board's functions resemble less those of a public utility board than those of an agricultural marketing board.

One may conclude that with the passing of time the regulation of the trucking industry has assumed a life of its own. Its primary purpose is no longer the protection of the public but the protection of the regulated firms. If regulation is to be continued the changes in the purposes of regulation should be recognized and the powers of the Board should be more clearly defined to enable it to more effectively control the supply of trucking services.

As discussed in the section on the history of regulations, government regulation of motor transport covers three broad areas: safety and responsible behaviour on the highways, taxation (registration fees and fuel taxes) and the regulation of transportation business. The Task Force Review is obviously concerned with the latter but to the extent that the areas overlap the former areas must be dealt with.

In the following paragraphs the problems and issues in the motor transport industry that have been discussed earlier are listed and methods of dealing with them are discussed. The suggested solutions may vary depending upon the regulatory environment (Option 1, 2 or 3).

A. Classifications and Registration of Trucks

At present there are four classifications of trucks: PSV, commercial trucks, farm trucks and other trucks; there are also four different levels of taxation; PSV and commercial trucks pay

the highest registration fees; PSV and commercial trucks used to transport milk and cream only pay a lower fee; other trucks pay a still lower fee, and farm trucks pay the lowest fee of all.

Identified problems and issues are:

1. Commercial trucks supposedly carry the owner's goods without compensation. The criterion used in the legislation is compensation. Any time a truck is used to carry goods for compensation it is a public service vehicle. The problem is that very many commercial trucks transport goods for compensation. For example, a number of food distributors located in Winnipeg ship products to stores in all parts of Manitoba by commercial trucks and charge the cost of transportation to their customers. A strict interpretation of the Highway Traffic Act would require them to either ship their goods by PSV carrier in which case they may charge for transportation, or look after their own transportation in which case they may not receive compensation either directly or indirectly. Quasi-legal instruments have been devised to circumvent these requirements. While the trucks and trailers bear the name of the shipper and have CT plates, they are typically not owned by the distributor. The distributor may farm out the transportation services to trucking firms that do not have a PSV operating authority, or to owner-operators and sometimes to a combination of the two. In such

cases the distinction between PSV and commercial trucks has almost disappeared.

2. There are great difficulties in enforcing the provision that trucks which are not registered as PSV or commercial trucks may be operated only within 30 km. of the town where the registered owner has his business (or within 20 km. of the City of Winnipeg if that is where the owner has his business).

3. Trucks are registered as farm trucks although their primary purpose is to provide transportation services rather than to assist in the farming operation. Increasingly, trucks registered as farm trucks are in competition with PSV carriers of bulk commodities.

4. The differences in registration fees constitute inequalities in taxation which are difficult to justify; they are an incentive to cheat, and they make for unfair competition.

5. Contrary to the provisions of the Highway Traffic Act trucks have been registered to persons or companies who did not own them. This particular abuse has largely been corrected by a method of so-called dual registration. The truck is registered in the name of the owner and in the name of the company on whose behalf the truck is operated. In the case

of PSV trucks, registration is conditional on the owner having a contract with an authorized carrier.

Possible Solutions

Option 1 (Minimum Regulation)

The simplest and most logical solution to the problems listed above is to reduce the number of truck classifications from four to two, PSV and commercial. Most pickup trucks and vans for personal use which are now registered as trucks would be registered as passenger vehicles. All other trucks serve commercial purposes and would be registered as commercial trucks or public service vehicles. The distinction between PSV and other trucks is considered desirable to indicate that the operator of the PSV truck carries goods belonging to a third party and must therefore have fidelity and liability insurance. In other words, a PSV license would be a guarantee to the shipper and/or consignee that the trucker is properly insured. In order to avoid the problem (experienced in Alberta) of insurance being cancelled unbeknown to the Motor Transport Board all insurers are required to give advance notice of cancellation to the Motor Transport Board. Cancellation of insurance would automatically result in the cancellation of the registration of the truck(s). Provided he obtains the necessary insurance the owner of a truck could register his vehicle either as PSV or as commercial truck.

The registered owner would be free, naturally, to sign contracts to operate his vehicle exclusively in the service of a common carrier or any other business.

Truck registration fees would be the same for all owners and would be based on gross vehicle weight only. A corollary would be the elimination of tax exempt fuel in farm trucks since there would be no separate classification of farm trucks.

The adoption of the principle that "a truck is a truck is a truck, regardless who owns it" is a logical consequence of opting for a system of minimum regulation. In the absence of specific regulation, competition among the owners of trucks will determine the level and the price of services. In order to have fair competition all owners of trucks must pay the same fees and fuel taxes for the use of the highways.

Option 3 (Maximum Enforceable Regulations)

Option 3 implies a preference for a regulated system provided that the regulations can be enforced. Effective enforcement requires that violations can be easily identified, and that incentives to cheat or get around the regulations be kept to a minimum.

Because the present classification system makes it very profitable to cheat and because it is very difficult to identify violations, the solution to reduce the number of classifications to two is as

logical in option 3 as it is in option 1. The definition of commercial truck would be changed to include all trucks that are not public service vehicles.

As in option 1, all trucks would be registered in the name of the beneficial owner.

Option 2 (Medium Degree of Regulation)

In option 2 the classification and registration of trucks could be the same as in option 3. The provision that commercial trucks may not transport goods for compensation would be dropped. There is little sense to a system that allows a distributor using commercial trucks to charge the cost of delivering within a radius of 20 km. of Winnipeg but forbids him to charge the cost of delivering to Thompson. It says something for the ingenuity of lawyers that they can make delivery charges between Winnipeg and Thompson legally disappear. In option 3 distributors would have the choice of either operating their own fleet and charging the cost of delivery, or farming out their transportation services to a trucking company (or owner-operator) which (or who) would have PSV operating authority restricted to contract carrying.

B. Entry - Who May or May Not Provide Transportation Services

Distinction must be made between authority to provide transportation services within Manitoba and authority to operate

across the provincial borders. In all three options regulation of interprovincial and international motor transport would remain in effect. Changes in the interprovincial regulatory system would continue to be brought about in coordination with regulatory authorities in other jurisdictions. The following discussion applies only to transportation within Manitoba.

Identified Problems

1. Applicants for operating authority must go through a process that is lengthy, legalistic, cumbersome and sometimes expensive. All applications are gazetted; if the application is opposed a hearing is scheduled at which parties, usually represented by legal counsel, are heard. Unopposed applications typically are processed within four months; decisions on opposed applications typically take between six and twelve months.

2. The process and the expense of legal counsel tend to discourage unsophisticated persons who aspire to become for-hire carriers and tend to favour firms which are established in transportation and which retain law firms with expertise in transport regulation.

3. The process seems to be far more elaborate and legalistic than the legislation requires. There is nothing in Part VIII of The Highway Traffic Act that requires the Board to

advertise applications in the Gazette or otherwise; nor does the Act require the Board to have hearings to deal with applications (see Section 263 Highway Traffic Act). It would appear that the highly formalized process is the outcome of 50 years of evolution reinforced by decisions of the Manitoba Court of Appeal. Built into the process is the assumption that firms with existing operating authority have proprietary rights which could be threatened by the granting of additional operating authorities, and that therefore an opportunity must be given to oppose applications for authority. That assumption seems to be contrary to Section 263(7) and Section 266(1) of The Highway Traffic Act.

4. The process and the underlying assumptions are a reflection of the basic conflict between the administrative allocation of the privilege to do business and the right, generally assumed to exist and generally exercised, to buy and sell businesses.

5. Interlining and tacking are other problems that spring from the conflict between the administrative allocation of the right to do business and the profit seeking behaviour that is natural to business. The routine manner in which trucking firms are acquired by other trucking companies and their operating authorities integrated by means of interlining and tacking results in the loss of control by the regulatory

authority. A decision must be made on what is more important: the regulated system or freedom of action of the companies engaged in transportation.

Option 1

In Option 1, any person meeting the legal requirements with respect to vehicle safety, vehicle operation and insurance would be free to provide for-hire transportation services anywhere in Manitoba.

Option 3

In Option 3, entry into the transportation industry would remain restricted. In deciding on applications for operating authority the Motor Transport Board would use the criteria of need (insufficient service) and public convenience.

To speed up the process and to reduce the present biases in favour of the established companies the Board should not be obliged to advertise all applications. Applications by new carriers or by small companies could be dealt with through informal interviews by a two or three man panel. Advertising and formal hearings might be reserved for applications by big companies seeking additional authorities or approval for takeovers.

No interlining or tacking of authorities would be allowed without written approval of the Board. In order to establish clarity on the issue the operating principle would be that the Board would approve such applications only in cases of demonstrated public need and convenience. Approvals would be the exception rather than the rule.

Option 2

There are a number of alternatives in Option 2.

(a) Regulation of motor transport might be lifted in parts of the province where the number of existing and potential truckers is such that there is no reason to fear that communities would go without service or that customers would be gouged. As in Option 1, any person meeting the legal requirements with respect to vehicle safety, vehicle operation and insurance would be free to provide for-hire transportation services in such areas of the province.

In areas of the province where service might suffer if it were left to market forces, the regulatory system would be retained as in Option 3.

(b) Regulation could be reduced by adding to the list of designated commodities for which PSV authorities are granted upon request. Eventually entry restrictions might

only apply to carriers of general freight in less than truckload lots.

(c) A combination of alternatives (a) and (b).

C. Owner-Operators

Identified Problems

Among the major problems discussed in the paper are the following:

1. Owner-operators have no status in legislation; they are neither employees nor truckers;
2. Owner-operators have weak bargaining position; they often have to accept unfavourable contracts, they commonly drive more hours than desirable from the point of view of safety, and they tend to undermine the bargaining strength of labour unions;
3. Owner-operators are a major factor in the over-expansion and excess capacity in the industry;
4. Owner-operators are often described as lacking in business management skills.

Possible Solutions

Option 1

In Option 1, all owners of trucks would be free to register their vehicle as a PSV or commercial truck and to provide trucking services anywhere in Manitoba. Owner-operators would also be free to sign exclusive contracts with trucking companies or other businesses. Their legal status would be clear. The freedom to explore all business opportunities and to strike out on their own might improve their bargaining position with potential contract partners.

Option 3

A number of alternatives may be considered.

(a) The legislation could require that all owner-operators be treated as full benefit employees. Thus owner-operators would be employees owning their "tool". The truck would be registered in the name of the owner, but a separate operating certificate would be required showing the name of the carrier or private trucker with the operating authority.

One problem with this arrangement is that the employee status is difficult to reconcile with the ownership of the truck under the Income Tax Act. The revenues and expenses

associated with the "tool" would dwarf the wages. And how would lay-offs be dealt with?

Also, in order to assure that imaginative legal instruments would not be used to circumvent the regulation, contracts between owner-operators and carriers or private truckers would have to be reviewed and approved by the Motor Transport Board.

(b) A separate category of carriers could be created for owner-operators. Thus a category of "haul-away authority" could be devised, giving authority to owner-operators for designated carriers or shippers. The question arises whether that authority would be restricted to work for only one carrier or shipper, or for more than one. The question also must be faced what would happen if a carrier or shipper did not have sufficient work for an owner-operator with haul-away authority. Would it be incumbent upon the Board to assign him to another carrier or shipper? The consequence of that might be that the Board would end up assuming control of the supply of trucking. Alternatively, the Board might have to broaden the authority of the laid-off owner-operator so that he could seek other freight; this would however be virtually equivalent to Option 1.

(c) It has been suggested in Ontario that successful completion of a short business course be made a requirement for all

owner-operators. It is assumed that getting a better understanding of the business economics of trucking would discourage some would-be owner-operators, and would enable those who persist to realize the need to drive a harder bargain with the carriers who employ their services.

Option 2

To the extent that part of the trucking business would be opened up to permit free entry the pressure on owner-operators would be somewhat relieved.

D. Working Conditions

Identified Problems

1. There is no provision in The Highway Traffic Act respecting hours of driving.
2. Owner-operators are not subject to the Employment Standards Act.
3. Federal regulations respecting drivers in interprovincial motor transport are inappropriate (maximum 15 hours driving per day, 18 hours on duty per day) and even these inadequate regulations are not being enforced.
4. Noise level in most truck cabins is too high.
5. Working conditions pose a threat to highway safety.

Possible Solutions

Improving working conditions and thereby improving highway safety is a desirable objective which should not be conditional upon preferences regarding regulated transport or free competition. Hence the suggestions listed below would apply to all three options.

1. Make provision in The Highway Traffic Act to regulate hours of work and other working conditions in motor transport (as used to be the case between 1938 and 1966). Provisions in The Highway Traffic Act apply to all persons using the highways in the province. Hence drivers in interprovincial transport would be subject to the regulations while driving in Manitoba.
2. Make the keeping of log books mandatory and where feasible use other auditable log systems as well (eg. time clocks at weigh stations).
3. Make drivers licenses, operating authorities, and/or CAVR registration conditional on obeying the regulations on hours of work.
4. Recommend to the Council of Transport Ministers an appropriate national "hours of work" regulation be instituted and an effective Canada-wide system of enforcing these regulations be put in place.

5. Through the Council of Ministers recommend equipment specifications to manufacturers to reduce the noise level in truck cabins.

E. Leasing

Identified Problems

Leasing and quasi-leasing arrangements are being used to circumvent virtually all regulations.

Possible Solutions

Option 1

Since every one would be free to engage in transportation there would be no need to devise mechanisms to circumvent regulations. To the extent that interprovincial transport would remain regulated, methods to counteract such mechanisms would have to be devised.

Option 3

All firms engaged in the leasing of highway transportation equipment and/or personnel would be made subject to the authority of the Motor Transport Board.

All leasing contracts would require the approval of the Board. The Board might delegate specific functions to officers of leasing companies. The Board could have the power to suspend the license of companies which violated rules and orders made by the Board. Carriers using lease contracts, buy-sell agreements or other imaginative legal instruments not approved by the Board could be called upon to show cause why their operating authority in Manitoba should not be revoked. In short, in order to make regulation workable the Board must exercise more direct control and must necessarily have a degree of arbitrary power.

Option 2

Freeing up part of the transportation sector will eliminate part of the problems. However, for the remaining regulated part the Board would exercise the powers suggested in Option 3.

F. Rates

Option 1

Freight rates would be determined through competition; the Board would not be involved in the determination of rates in Option 1.

Option 3

In Option 3 the Motor Transport Board would set and publish a standard tariff of tolls. Companies wishing to quote lower rates would have to obtain approval of the Board. Such filed and approved rates would be available to the public.

Option 2

Rates would be left to competitive forces in parts of the province where there is free entry into the industry. In the regulated sector rate setting would be as in Option 3.

Alternatively, a system could be developed whereby carriers would be required to file rates with the Board but would not need to seek approval. Carriers would not be permitted to discriminate between shippers.

G. Weights and Dimensions

Identified Problems

1. Maximum G.V.W. in Manitoba is 50 percent higher than permitted on the interstate highway system in the United States.
2. Permitted load limits exceed the designed strength of the highways and reduce the projected life of roads and bridges.

3. Highway maintenance and construction expenditures fall short of what is required to maintain the system in good repair.
4. Increases in weight and dimensions and the addition of trailers reduce the manoeuverability of the vehicles, increase the stress on the drivers and thus contribute to the hazards of highway transportation.
5. The high weight limits are a major factor in the excess capacity which plagues the industry and thus they contribute to the economic problems of the industry.

Possible Solutions

1. Reduce maximum G.V.W. to 36,300 kg. (80,000 lbs.) in conformance with the minimum level of the U.S. interstate system.

   Reduce axle loadings accordingly:

   - Front Axle - 5,500 kg. (12,000 lbs.)
   - Single Axle - 9,100 kg. (20,000 lbs.)
   - Tandem Axle - 16,000 kg. (35,000 lbs.)

2. Await the completion of a national study by the Roads and Transportation Association of Canada on weights and dimensions for national standards on the safety and manoeuverability of truck trailer combinations.

Other Matters

Suggestions have been received that freight forwarders and bulk breakers should be licensed by the Motor Transport Board and that the Board should prescribe standards and require that they be bonded.

It has also been suggested that the role of couriers be more specifically defined. To date no problems concerning buses and intermunicipal livery services have been referred to the Task Force, but such submissions would be welcome.

CONCLUSION

This paper has attempted to summarize the major issues which have been brought to the attention of the Task Force in its discussions with the various interest groups. Possible solutions within each regulatory scenario have been outlined as clearly as possible in order to focus responses from the interested public. It must be emphasized again that the various regulatory scenarios discussed have been presented to illustrate that a range of possible approaches exist and no inference should be drawn from them as to the preferences or policy positions of the Government of Manitoba at this time.

The Task Force will be holding a number of public meetings throughout the Province in order to elicit the views and opinions of those wishing to make presentations on the future of motor carrier regulation in Manitoba.

REG/REV#3

TDR-REV/REV

APPENDIX I

LEASE AGREEMENTS

Agreement

THIS AGREEMENT made this day of A.D.

BETWEEN:

hereinafter called the Company

— and —

hereinafter called the Operator.

WITNESSETH that in consideration of the mutual covenants herein contained, the parties hereto do convenant and agree each with the other as follows:

I. The provisions of this Agreement shall be effective from the date hereof until terminated by either party as herein provided.

II. The operator convenants and agrees with the Company:

(1) to transfer and set over and he does hereby transfer and set over to the Company a tractor type truck owned or leased by him, being a ..... model .... serial number .... to the end, purpose and effect that the Company may and shall be deemed the owner thereof for the purpose of placing and carrying insurance thereon and obtaining licenses therefor for provincial inter-provincial and international freight transport.

(2) that he shall and will paint such in such colors and manner, together with signs thereon as the Company may stipulate.

(3) that he shall and will personally drive and operate the same on such route or routes, hauling such trailer or trailers in the transportation of freight or otherwise as the Company may direct and shall not permit any other person or persons to drive or operate the same, save as the Company may expressly consent to.

(4) that he shall not during the currency of this Agreement use said truck for any purpose or purposes other than as directed by the Company.

(5) that he shall and will repair and keep said truck in a good and proper state of repair, satisfactory to the Company, and shall pay and discharge as the same become due, all costs and expenses of so doing, and shall, wherever possible, have such repairs effected or completed at the garage facilities provided by the Company.

(6) that he shall and will pay all costs and expenses of operating said truck according to the provisions hereof.

(7) that he shall and will at all times comply with and obey all laws, bylaws, and regulations governing or applying to the operation of said truck, and shall be responsible for and personally pay and satisfy all fines and assessments, made, imposed, levied or charged against him for the violation of any said law, bylaw or regulation, save only where said breach is caused by the action of the Company.

(8) that he shall and will be responsible for checking the loading and loads of any trailer or semi-trailer hauled by him to ensure that the same is properly loaded for correct axle weights; failing proper or any check by him, he shall be personally responsible for any fines imposed or assessed for breach of weight regulations.

(9) that he shall and will be responsible for all cargo entrusted to him and being moved by his truck in any trailer or semi-trailer attached thereto; he shall and will assume and pay all claims resulting or arising from the transportation or hauling of cargo.

(10) that he shall and will indemnify and save harmless the Company for and in respect of any costs, expenses, fines and assessments and claims as provided or referred to in subparagraphs (5), (6), (7), (8) and (9) above.

(11) that he shall and will reimburse and pay to the Company, as the same are incurred or at times mutually agreed upon, all costs and expenses for the licensing of said truck, premiums for insurance thereon, at the rate set forth in paragraph VII (4) i and ii, (insurance in amount or amounts as stipulated by the Company), and for all permits required in the operation thereof pursuant to the terms of this Agreement.

(12) that he shall and will be responsible for the continued proper operation of all heating and refrigeration units in or on the trailers or semi-trailers hauled by him, having regard to the freight being transported, and shall satisfy himself that same are working properly before leaving a terminal. Any defect or breakdown of such unit shall be reported to the Company immediately and the Company shall be responsible for the cost of all repairs and replacements excepting where same are caused by the act or the omission of the operator, in which case the operator shall be responsible for the cost of all such repairs and replacements.

(13) that he shall and will be responsible for reimbursing the Company for all damage to Company equipment or cargo being transported, up to the full deductible in respect thereto under the applicable insurance coverage thereon; this shall be deemed to include damage caused by improper handling, excessive speed, reckless and careless driving, tires run flat or short of air, and for the loss of tires or wheels during a trip. The onus shall be on the operator to obtain an acknowledgment from terminal manager as to condition of equipment at end of each trip, and where trailer exchange is made at other than terminal, to obtain from driver of other truck, or company employee, if there present a signed certificate as to condition of trailer or semi-trailer and its equipment. To permit reasonable determination of responsibility all damage to trailer, semi-trailer or equipment shall be chargeable to last driver picking up trailer or semi-trailer in apparently good condition.

(14) that he shall not, without the prior consent of the Company, during the term of this Agreement, enter into any agreement with any other transport company or individual engaged in truck transport, to haul freight, trailers or semi-trailers, which are or may be in direct competition with the business carried on by the Company.

(15) that he shall and will, at all times, through and in contact with or service to the Company's customers, observe and maintain a proper behaviour and co-operation; he must use his best and earnest endeavours in all matters to advance the business of the Company.

(16) that he shall and will purchase all diesel fuel or gasoline required in his performance of this contract from pumps or supplies operated or sold by the Company or at such other service facility and facilities on route or routes travelled as may be designated by the Company.

(17) to complete and deliver to the Company such haulage, mileage and other reports as the Company may require, all at times stipulated by the Company.

III. It is a particular term and provision hereof that the operator does not have the right and shall not, at any time, pledge the credit of the Company, nor incur bills, accounts or liabilities in its name or on its behalf.

IV. It is understood and agreed that all license plates provided hereunder for the operation of said truck are and shall remain the property of the Company and shall be returned to the Company by the operator on demand; provided that on the return of said plates or any thereof on demand by the Company the operator shall be entitled to be reimbursed in a sum equal to refund of license fee obtainable on surrender by the Company of said license plate or plates to the issuing authority.

V. The Company shall not be responsible for, nor shall it be deemed to assume any lien, charge or encumbrance,on, over or against said truck.

VI. Nothing herein contained shall be deemed to constitute the operator as an employee of the Company; he shall at all times and for all purposes be and be deemed to be an independent contractor.

VII. The Company may and shall:

(1) establish route times of departure and approximate arrival at destination; it being understood that such is required in the operation of its business; the operation and times of operation between points shall be at the discretion of the operator, provided that he shall use every proper endeavour to meet the Company's applicable schedule of operation.

(2) meet its obligations in accordance with the terms of this Agreement.

(3) endeavour to provide a reasonable and adequate amount of freight transport to be hauled by the operator, to the end that he may have a profitable operation hereunder.

(4) pay to the operator as a contract price hereunder in full and complete satisfaction of and for all things to be done and carried out by the operator, a sum computed as follows:-

Said contract price shall be determined by the Company at the end of each month and shall be payable by the Company to the operator at the end of three (3) weeks thereafter; provided that the Company shall have the right to deduct from any moneys becoming payable to the operator any sum or moneys which it is entitled to be indemnified for or against by the operator, or due or payable by the operator to the Company under any provision hereof or for the purchase by the operator from the Company of fuels or other articles or merchandise.

VIII. It is further agreed that in the event of the operator ceasing for any reason to be bound by or to carry out the provisions of this Agreement, that the Company may retain all moneys then payable or becoming payable to the operator for a period of ninety (90) days, with the right to charge thereagainst all moneys payable or becoming payable by the operator to the Company or in respect of which the Company is entitled to be indemnified by the operator.

IX. This Agreement may be cancelled by either party at any time for breach of any material term hereof by the other party, or either party may cancel the same by and on thirty (30) days written notice to the other party.

X. On termination of this Agreement the Company shall reconvey to the operator such title as the operator shall have earlier conveyed to the Company on and to said truck.

XI. Each of the parties shall execute and grant all documents and assurances and do all things reasonably necessary to give full effect to the true intent and purpose hereof.
Tractors leased to the said Company painted, lettered, and registered in their names, must, at all times, be parked on Company property when not being used for the purpose of hauling freight.

IN WITNESS WHEREOF the Company has caused its corporate seal to be hereunto affixed as attested by the hands of its duly authorized officers and the operator has set his hand and seal.

SIGNED, SEALED AND DELIVERED
in the presence of

.....

.....

per:

.....

per:

THIS INDENTURE made the day of A.D. 19
BETWEEN:

Name _____ of

_____
Address

_____
hereinafter called the broker

- and -

_____
Company Limited

_____
hereinafter called the company

WHEREAS the company is duly licenced under the authority of the Province of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec, for the purpose of carrying on the business of carriers of freight, and whereas, in order to perform this service safely and efficiently, the company is obliged to enter into an agreement with the brokers to act on their behalf to provide this service for a stipulated contract price.

AND WHEREAS the broker is the owner of a

_____.
(year, model, serial number)

AND WHEREAS the broker is desirous of transferring the said unit to the company and whereas the company is desirous of acquiring ownership of the said unit and whereas it is the intention of the company to provide to the broker opportunities for haulage of cartage.

NOW in consideration of the mutal covenants herein contained, the parties hereto covenant and agree as follows:

1. The broker does hereby bargain, sell, assign and transfer to the company the said unit hereinbefore described.

2. The broker covenants and agrees that the said unit is free and clear of all charges, liens and encumbrances of every nature and kind except the following:

_____

_____

_____

3. In the event that there are any liens, charges or encumbrances in existence as set out in paragraph 2 hereof, the broker hereby covenants and agrees to continue to assume liability for payment or discharge of same in accordance with the terms of the contracts, agreements or arrangements between the broker and the lien holder or encumbrancers. The parties hereto specifically agree that the company, by virtue of the transfer referred to in paragraph 1 hereof, assumes no liability or responsibility for payments to lien holders or encumbrancers or to make any arrangements to effect the discharge of any lien, charges or encumbrances of the said unit.

4. The broker covenants to drive the said unit himself and hereby covenants and agrees that in the event any servant, agent or employee is engaged to operate the said unit that:

   (a) the broker will pay the operator of the aforementioned unit and the company assumes no liability therefor;

   (b) the broker will comply with any responsibilities, legislation or regulations required of an employer pursuant to the requirements of any federal, provincial or state jurisdiction in which he operates or drives the aforementioned unit and without limiting the generality of the foregoing, the broker specifically agrees to comply as an employer with the provisions of the Workmen's Compensation Act of the various provinces, the Dominion Labour Laws, the Unemployment Insurance Act and the Income Tax Act, in regards to any of his employees, servants or agents;

   (c) any servant, agent or employee of his must be of, at least, the age of 25 years;

   (d) any servant, agent or employee of his must be of good character, integrity and honesty;

   (e) he will ensure that his servants, agents or employees carry out their duties in accordance with the requirements, standards and covenants herein contained between the broker and the company.

5. (a) The company covenants and agrees to pay to the broker for hauling the company's trailers, loaded or empty, a mileage rate as specifically set out in Appendix "A" (which the parties hereto acknowledge as forming part of the within contract). The parties further agree that such rate be paid for mileage distances as established from time to time by the company.

6. The broker covenants and agrees to purchase all registration plates and permits required for the operation and driving of the unit in and through the federal, provincial and state jurisdictions the unit is to be driven, except those specifically agreed to be paid for by the company. In the event of termination of the within agreement, the company agrees to use its best efforts to assist the broker in the disposition of the plates and registration permits for the unexpired portion thereof but the company assumes no liability or responsibility for licence fees, costs or fees payable or paid by the broker in respect of the driving or operation of the unit through any federal, provincial or state jurisdiction.

7. (a) The company covenants, subject to the provisions of paragraph 8 herein, to provide insurance on the unit as follows:

(1) Against direct and accidental loss of or damage to the unit caused by collision with another object or by upset;

(2) Against direct and accidental loss of or damage to the unit caused by fire or theft;

(3) Against the liability imposed by law upon the company for loss or damage arising from the ownership, use or operation of the unit and resulting fom bodily injury to or death of any person or damage to property;

(4) Against the liability imposed by law upon the company for loss or damage arising from the carriage of cargo and resulting from loss, damage or delay suffered by a shipper or consignee;

(5) Against direct and accidental loss of or damage to the company's equipment.

(b) The broker agrees to contribute to the cost of the insurance coverage aforesaid, the amount of such contribution being calculated by multiplying the number of miles travelled by the unit per year times 2 cents and the broker agrees that the company deduct that contribution from the monies payable to the broker as set out in Paragraph 5 of this agreement.

(c) The parties agree that the sum of ½ cent per mile per year shall be rebated to the broker at the end of each fiscal year in the event that, within each eyar, no claim is made against the company and its insurers, jointly or severally, that exceeds the deductible amounts set forth in Paragraph 8 of this agreement.

(d) It is further agreed that any insurance rebate earned by a broker shall be credited to his account within 60 days after the close of the company's fiscal year, which is the last Friday of December.

(e) The broker, by his signature to this contract, constitutes and appoints the company his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the company arising from the ownership, use or operation of the unit and/or arising from the carriage of the cargo.

(f) The broker further agrees not to voluntarily assume liability, or settle any claim except at his own costs, or interfere in any settlement negotiations or in any legal proceedings. The broker, when requested by the company or its insurers agrees to assist in securing information and evidence and shall cooperate with the company and its insurers in the defence of any action or proceeding.

8. (a) The broker covenants and agrees to pay to the company the following:

(i) In the event of direct and accidental loss of or damage to the unit caused by collision with another object or by upset, all the amount up to and including the first $1,000.00 of the said loss or damage on the unit.

(ii) In the event of loss or damage arising from the ownership, use or operation of the unit for liability imposed by law upon the company or upon such other person resulting from damage to property, all the amount up to and including the first $500.00 of the said loss or damage.

(iii) In the event of direct and accidental loss of or damage to the company's equipment, caused by any source, cause or peril whatsoever, any amount up to and including the first $500.00 of the said loss or damage.

(iv) In the event of any loss or damage to cargo from any source, cause or peril, including loss or damage arising from liability imposed by law on the company as a carrier resulting from loss, injury or damage suffered by a shipper, consignee or other party, all the amount up to and including the first $500.00 of such loss or damage.

(b) The broker covenants and agrees that the company or its insurers will not be liable for any loss or damage where the broker or his employees, agent, sub-broker, second driver or other person drives or operates the unit;

(i) While under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the unit; or

(ii) While in a condition for which he is convicted of an offence under Section 234 or Section 236 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under Section 235(2) of the Criminal Code (Canada).

And the broker hereby agrees to indemnify and hold harmless the company or its insurers from any amounts that the company or its insurers may be called upon to pay for any loss or damage occasioned in or during the circumstances aforementioned in (i) and (ii) above.

(c) The broker covenants and agrees that in no event will the company or its insurers be liable for direct and accidental loss of or damage to the unit beyond the actual cash value of the unit.

9. The parties further agree that the company shall establish a Reserve Fund for the purpose of paying the deductible amounts as referred to in Paragraphs 6 and 8 hereof, and for the payment of any other debts incurred by the broker which the company may be called upon to pay, by deducting a further $150.00 per week from the gross revenue earned by the broker to a maximum of $2,500.00. The parties agree that the company shall pay out of the Reserve Fund to itself the amounts that become payable to the company pursuant to the provisions of Paragraph 6 or 8 hereof, together with any other amounts for debts or liabilities, fines or penalties incurred by the broker which the company has been called

upon to pay. In the event that the Reserve Fund is not sufficient to accommodate the amounts for which the company is entitled to reimbursement, compensation or repayment as hereinbefore set forth, the company is entitled to compensation, reimbursement, recovery and indemnification against the broker for the excess amounts. In the event of termination of a broker, the balance of the reserve fund, after all above disbursements, shall be paid out to the broker within 90 days. Appendix B specifically sets out the amounts of licences payable by the company.

10. The broker hereby agrees to maintain the unit at his cost. He further agrees to exercise reasonable care in the operation of Company equipment which may be in his possession, and to provide at his cost the fuel consumed, and further to observe all safety and other requirement pursuant to federal, provincial or municipal legislation or by-laws, and to be personally responsible to pay any levies, penalties or fines incurred by him or his employees, servant or agent for violation thereof, or for any other willful acts of negligence in the operation of the unit assessed against him, his servants, agents or employees, for any cause.

11. The parties agree that the within agreement shall be effective and binding on the parties until terminated as follows:

    (i) The company may terminate the within agreement by mailing a written notice of termination to the broker by registered post, addressed to the broker at the address noted on Page 1.

    Termination is to be effective as of midnight of the 30th day following the said posting, except for offenses under Paragraph 8(b)(i) and 8(b)(ii), when termination is effective immediately.

    (ii) The broker may terminate the within agreement by delivery to the company at its office at the address noted on Page 1, of a written notice of termination. Termination of the within agreement is to be effective at midnight of the 30th day following receipt by the company of the notice of termination.

12. The broker agrees to permit installation on the unit of a tachograph or similar device that records the speed and operation of the unit, and further to install charts for the tachograph or similar device, and submit these charts to the company as required.

13. The broker agrees to submit the unit from time to time as required by the company to inspection of the unit for the purpose of maintenance inspections, overhauls, repairs, and inspections by the company to ensure the safety and efficiency of operation of the unit.

14. In the event of termination of this agreement by either party, the company undertakes and assures the broker to execute such documents as may be required to transfer ownership of the aforementioned unit to the broker.

15. In the event of termination of the within agreement by either party, the parties agree that the company shall maintain the reserve fund referred to in Paragraph 9 hereof in accordance with the provisions of the said paragraph.

16. In the event of termination of the within agreement by either party, the broker agrees to deliver to the company or deliver up the unit for removal of the tachograph or other similar device and any charts or papers in connection therewith, together with all forms of identification to the company.

17. The broker further agrees to return to the company any permits, decals, or company papers upon the termination of this agreement.

18. The company and the broker agree that the broker is an independent contractor and nothing in this agreement intended or implied is to be construed, taken or classified as making the broker an employee.

19. (a) The parties further agree that the company may effect changes in Appendix "A", "B", and "C", by mailing a notice of proposed changes to the broker, addressed to him at the address noted on Page 1, and the parties agree that such changes will become effective 30 days after the date of mailing pursuant to this agreement.

(b) The parties further agree that unless the broker delivers to the company a notice of objection within 14 days of the mailing of the notice of changes referred to in Paragraph 19(a) hereof, or by mailing same by registered mail to the company or delivering same to the company personally, the broker shall be deemed to have accepted the changes set out in the notice delivered to him.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals in the City of _____, in the Province of _____, this _____ day of _____, 19 .

SIGNED, SEALED AND DELIVERED

in the presence of

_____
(Broker)

_____
(The Company)

_____
(Witness)

APPENDIX "B"

The operator pays for licence in his province of domicile and next province subject to maximum of $2,000 over which amount the company pays.

APPENDIX "D"

INSURANCE RATES

Due to an increase in the cost of Insurance, effective September 6, 1981, Article 7 (b&c) of your contract has been amended to read as follows:

7. b. The broker agrees to contribute to the cost of the insurance coverage aforesaid, the amount of such contribution being calculated by multiplying the number of miles travelled by the unit per year times 2½ cents and the broker agrees that the Company deduct that contribution from the monies payable to the broker as set out in Paragraph 5 of this agreement.

c. The parties agree that the sum of 1 cent per mile per year shall be rebated to the broker at the end of each fiscal year in the event that, within each year, no claim is made against the Company and its insurers, jointly or severally, that exceeds the deductible amounts set forth in Paragraph 8 of this agreement.

Your acceptance of the Amendment by this Appendix is verified by your signature in the presence of:

_____
(Owner Operator)

_____ _____
(Witness) (The Company)